

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

VALENTINO DIXON,

Petitioner,

v.

ORDER
05-CV-208

JAMES T. CONWAY, Superintendent of
Attica Correctional Facility,

Respondent.

This case was referred to Magistrate Judge Victor E. Bianchini, pursuant to 28 U.S.C. § 636(b)(1). On March 28, 2005, petitioner filed a petition for a writ of habeas corpus. On January 7, 2009, Magistrate Judge Bianchini filed an Amended Report and Recommendation, recommending that the Court find that the petition is untimely.

Petitioner filed objections to the Report and Recommendation on January 20, 2009 and respondent filed a response thereto on March 9, 2009. Oral argument on the objections was held on March 12, 2009.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument

from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Bianchini's Report and Recommendation, petitioner's petition for a writ of habeas corpus is denied. The Clerk of Court is directed to take all steps necessary to close the case.

The Court finds that petitioner has failed to make a substantial showing of the denial of a constitutional right and therefore denies his motion for a certificate of appealability. 28 U.S.C. § 2253(c)(2).

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: May 5, 2009